

## **DRAFT Agreement for Engineering Design Services for Seismic Retrofit of Secondary Treatment Clarifiers at Sonoma Valley County Sanitation District Wastewater Treatment Plant**

This agreement ("Agreement") is by and between **Sonoma Valley County Sanitation District** ("District") and **Water Systems Consulting, Inc.**, a California corporation ("Consultant"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 5.1.

### **RECITALS**

- A. Consultant represents that it is a duly qualified and licensed engineering design firm, experienced in seismic retrofit design of wastewater treatment plant clarifiers and related services.
- B. District's wastewater treatment plant (WWTP) is located in the unincorporated area of Schellville in Sonoma County, south of the City of Sonoma. The WWTP receives and treats wastewater from a service area of approximately 4,500 acres, covering the City of Sonoma and the unincorporated areas of Glen Ellen, Eldridge, Agua Caliente, Feters Hot Springs, Boyes Hot Springs, El Verano, Temelec, and Vineburg. The WWTP services about 20,500 equivalent single-family dwelling units, and has an average dry weather capacity of 3 million gallons per day.
- C. District's Natural Hazard Reliability Assessment (NHRA) first identified a potential vulnerability of the clarifiers to seismic hazards. The facility has two circular reinforced concrete clarifier tanks, each being 140-foot in diameter. While the tanks themselves are considered adequate to withstand a design earthquake, the NHRA identified the clarifiers' internal mechanisms as being vulnerable to seismic inertial forces and resulting hydrodynamic loading. The objective of the Seismic Retrofit of Secondary Treatment Clarifiers Project (Project) is to mitigate the potential failure of the secondary clarifiers at the WWTP by seismic retrofit of the clarifiers' internal components.
- D. Under this Agreement, Consultant will provide design and construction contract documents for the Project. Tasks will include, but not be limited to, design, drafting, specification preparation, and assistance during bidding and construction. Seismic retrofit design shall address structural and hydrodynamic loading requirements as set forth in applicable codes and design guidance including, but not limited to, 2019 California Building Code and ASCE 7-16 Minimum Design Loads for Buildings and Other Structures.
- E. Sonoma County Water Agency operates and manages District under contract with District. References to District employees are understood to be Sonoma County Water Agency employees acting on behalf of District.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

## **AGREEMENT**

### **1. RECITALS**

- 1.1. The above recitals are true and correct to the best of Consultant's knowledge, information, and belief.

### **2. LIST OF EXHIBITS**

- 2.1. The following exhibits are attached hereto and incorporated herein:

- a. Exhibit A: Scope of Work
- b. Exhibit B: Schedule and Submittals
- c. Exhibit C: Schedule of Rates
- d. Exhibit D: Estimated Budget for Scope of Work
- e. Exhibit E: Federal Funding Requirements
- f. Exhibit F: Insurance Requirements

### **3. SCOPE OF SERVICES**

- 3.1. *Consultant's Specified Services:* Consultant shall perform the services and submit the documents outlined in Exhibit A (Scope of Work) within the times or by the dates provided for in Exhibit B (Schedule and Submittals). In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.
- 3.2. *Cooperation with District:* Consultant shall cooperate with District in the performance of all work hereunder. Consultant shall coordinate the work, except assistance during construction, with District's Project Manager. Consultant shall coordinate assistance during construction with District's Construction Management Principal Engineer. Contact information and mailing addresses:

<b>District</b>	<b>Consultant</b>
Project Manager: Kent Gylfe Phone: 707-547-1977 Email: <a href="mailto:kent.gylfe@scwa.ca.gov">kent.gylfe@scwa.ca.gov</a>	Contact: Rob Natoli 2330 East Bidwell Street, Suite 110 Folsom, CA 95630 Phone: 916-778-4288 Email: <a href="mailto:rnatoli@wsc-inc.com">rnatoli@wsc-inc.com</a>
Construction Management Principal Engineer: Mike West Phone: 707-547-1984 Email: <a href="mailto:Mike.West@scwa.ca.gov">Mike.West@scwa.ca.gov</a>	
Grant Manager: Joan Hultberg Phone: 707-547-1902	

<b>District</b>	<b>Consultant</b>
Email: <a href="mailto:Joan.Hultberg@scwa.ca.gov">Joan.Hultberg@scwa.ca.gov</a>	
404 Aviation Boulevard Santa Rosa, CA 95403-9019	
<b>Remit invoices to:</b> Accounts Payable  Same address as above or Email: <a href="mailto:ap_agreements@scwa.ca.gov">ap_agreements@scwa.ca.gov</a>	<b>Remit payments to:</b> Water Systems Consulting, Inc. 805 Aerovista Place, Suite 201 San Luis Obispo, CA 93401

3.3. *Performance Standard and Standard of Care:* Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement (“the Standard of Care”) and shall exercise the Standard of Care to comply with all applicable federal, state and local laws, it being understood that acceptance of Consultant’s work by District shall not operate as a waiver or release. District has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. If District determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, District, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with District to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 6 (Termination); or (d) pursue any and all other remedies at law or in equity.

3.4. *Assigned Personnel:*

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time District, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from District.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by District to be key personnel whose services were a material inducement to District to enter into this Agreement, and without whose services District would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of District.

- c. With respect to performance under this Agreement, Consultant shall employ the following key personnel:

<i>Title</i>	<i>Name</i>
Project Manager	Rob Natoli
Structural Engineer	Richard Thow
Structural Engineer	Zia Zafir

- d. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

#### **4. PAYMENT**

- 4.1. *Total Costs:* Total costs under this Agreement shall not exceed \$245,445.

- a. Total costs for Tasks 1-6 shall not exceed \$220,445.
- b. Total costs for Optional Task 7, if requested in writing by District, shall not exceed \$25,000.
- c. Total costs shall not be exceeded, regardless of whether it takes Consultant more time to complete or costs more than anticipated.
- d. No more than \$172,850 will be paid for Tasks 1-4 and Task 6 (Paragraphs 2.1–2.4 and 2.6 of Exhibit A) until the final design is submitted.

- 4.2. *Method of Payment:*

- a. Consultant shall be paid in accordance with Exhibit C (Schedule of Rates). Billed hourly rates shall include all costs for overhead and any other charges, other than expenses specifically identified in Exhibit C. Expenses not expressly authorized by the Agreement shall not be reimbursed.

- 4.3. *Invoices:* Consultant shall submit its bills in arrears on a monthly basis, based on work completed for the period, in a form approved by District. The bills shall show or include:

- a. Consultant name
- b. Name of Agreement
- c. District's Project-Activity Code V0005C019
- d. Task performed with an itemized description of services rendered by date
- e. Summary of work performed by subconsultants, as described in Paragraph 15.4
- f. Time in quarter hours devoted to the task
- g. Hourly rate or rates of the persons performing the task
- h. List of reimbursable materials and expenses
- i. Copies of receipts for reimbursable materials and expenses

- 4.4. *Cost Tracking:* Consultant has provided an estimated breakdown of costs, included in Exhibit D (Estimated Budget for Scope of Work). Exhibit D will only be used as a tool to monitor progress of work and budget. Actual payment will be made as specified in Paragraph 4.2 above.
- 4.5. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within the normal course of District business after presentation of an invoice in a form approved by District for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by District.
- 4.6. *Taxes Withheld by District:*
- a. Pursuant to California Revenue and Taxation Code (R&TC) section 18662, District shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
  - b. If Consultant does not qualify, as described in Paragraph 4.6.a, District requires that a completed and signed Form 587 be provided by Consultant in order for payments to be made. If Consultant is qualified, as described in Paragraph 4.6.a, then District requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, Consultant agrees to promptly notify District of any changes in the facts. Forms should be sent to District pursuant to Article 17 (Method and Place of Giving Notice, Submitting Bills, and Making Payments) of this Agreement. To reduce the amount withheld, Consultant has the option to provide District with either a full or partial waiver from the State of California.
- 4.7. *Federal Funds:*
- a. All or part of this Agreement will be paid with federal awards. As a pass-through entity, District is required to provide certain information regarding federal award(s) to Consultant as a sub recipient. In signing this Agreement, Consultant acknowledges receipt of the following information regarding federal award(s) that will be used to pay this Agreement:

CFDA Title	Hazard Mitigation Grant Program
CFDA Number	97.039
Award Name	SVCSD Seismic Retrofit of Secondary Treatment Clarifiers
Award Number	DR4344-PJ0121

Federal Agency	U.S. Dept. of Homeland Security, Federal Emergency Management Agency
Pass-through Agency	California Governor's Office of Emergency Services

- b. As a sub recipient of federal awards, Consultant is subject to the provisions of U.S. Office of Management and Budget Circular A-133, *Audits of states, Local Governments, and Non-Profit Organizations* (hereinafter "OMB Circular A-133"). In signing this Agreement, Consultant acknowledges that it understands and will comply with the provisions of OMB Circular A-133. One provision of OMB circular A-133 requires a sub recipient that expends \$500,000 in federal awards during its fiscal year to have an audit performed in accordance with OMB Circular A-133. If such an audit is required, Consultant agrees to provide District with a copy of the audit report within nine months of Consultant's fiscal year end. Questions regarding OMB Circular A-133 can be directed to the Sonoma County Auditor-controller Treasurer-Tax Collector's Office - General Accounting Division.
- c. Consultant is informed and aware that this Agreement is funded by a grant from FEMA (award number DR4344-PJ0121), which grant is conditioned upon various terms that apply to Consultant. Consultant has reviewed the grant award documents attached hereto as Exhibit E (Federal Funding Requirements) and hereby agrees to comply with them to the extent they apply to a subrecipient.

## **5. TERM OF AGREEMENT AND COMMENCEMENT OF WORK**

### **5.1. *Term of Agreement:***

- a. This Agreement shall expire on December 31, 2023, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
- b. District shall have two options to extend this Agreement for a period of one year each by providing written notice to Consultant thirty days in advance of the expiration date noted in this Article and of the first extension option.

### **5.2. *Commencement of Work:*** Consultant is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

## **6. TERMINATION**

- 6.1. *Authority to Terminate:* District's right to terminate may be exercised by Sonoma County Water Agency's General Manager.
- 6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, District shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

- 6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its material obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement and fail to promptly correct such default of violation upon notice, District may terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.
- 6.4. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to District all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 12.10 and shall submit to District an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 6.5. *Payment Upon Termination:* Upon termination of this Agreement by District, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate; and further provided, however, that if District terminates the Agreement for cause pursuant to Paragraph 6.3, District shall deduct from such amounts the amount of damage, if any, sustained by District by virtue of the breach of the Agreement by Consultant.
- 6.6. *Change in Funding:* Consultant understands and agrees that District shall have the right to terminate this Agreement immediately upon written notice to Consultant in the event that (1) any state or federal agency or other funder reduces, withholds or terminates funding which District anticipated using to pay Consultant for services provided under this Agreement or (2) District has exhausted all funds legally available for payments due under this Agreement.

## **7. INDEMNIFICATION**

- 7.1. Consultant agrees to accept responsibility for loss or damage to any person or entity, including Sonoma County Water Agency and Sonoma Valley County Sanitation District, to the extent caused by the negligence or willful misconduct of the Consultant, and to defend (except for professional liability claims), indemnify, hold harmless, and release Sonoma County Water Agency and Sonoma Valley County Sanitation District, their officers, agents, and employees, from and against any damages, liabilities, disabilities, or expenses, that may be

asserted by any person or entity, including Consultant, to the extent caused by the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent or contributory negligence on Sonoma County Water Agency or Sonoma Valley County Sanitation District's part, but, to the extent required by law, excluding liability due to Sonoma County Water Agency or Sonoma Valley County Sanitation District's conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

## **8. INSURANCE**

- 8.1. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit F (Insurance Requirements).

## **9. PROSECUTION OF WORK**

- 9.1. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

## **10. EXTRA OR CHANGED WORK**

- 10.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma County Water Agency's General Manager in a form approved by County Counsel. The parties expressly recognize that District personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of District.



## **11. CONTENT ONLINE ACCESSIBILITY**

- 11.1. *Accessibility:* District policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- 11.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a District managed or District funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794(d)), and District's Web Site Accessibility Policy located at <http://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>.
- 11.3. *Certification:* With each final receivable intended for public distribution (report, presentations posted to the Internet, public outreach materials), Consultant shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g., Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- 11.4. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with District staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 11.5. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with District's Web Site Accessibility Policy shall be the responsibility of Consultant. If District, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any District managed or District funded Web site does not comply with District Accessibility Standards, District will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to District, repair or replace the non-compliant materials within such period of time as specified by District in writing. If the required repair or replacement is not completed within the time specified, District shall have the right to do any or all of the following, without prejudice to District's right to pursue any and all other remedies at law or in equity:
  - a. Cancel any delivery or task order
  - b. Terminate this Agreement pursuant to the provisions of Article 6 (Termination); and/or
  - c. In the case of custom Electronic and Information Technology (EIT) developed by Consultant for District, District may have any necessary changes or repairs performed by itself or by another contractor. In such event, Consultant shall be liable for all expenses incurred by District in connection with such changes or repairs.

- 11.6. *District's Rights Reserved:* Notwithstanding the foregoing, District may accept deliverables that are not strictly compliant with District Accessibility Standards if District, in its sole and absolute discretion, determines that acceptance of such products or services is in District's best interest.

## **12. REPRESENTATIONS OF CONSULTANT**

- 12.1. *Status of Consultant:* The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of District and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits District provides its employees. In the event District exercises its right to terminate this Agreement pursuant to Article 6 (Termination), Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 12.2. *Communication with District's Contractor:* All communication shall be between Consultant and District. Consultant shall have no authority to act on behalf of District, to stop work, to interpret conditions of the construction contract, or to give direction to District's contractor. Nothing in this provision shall serve to limit Consultant's responsibility to provide such engineering or related services as are required to complete other work or correct any errors or omissions of Consultant in the performance of services under this Agreement.
- 12.3. *No Suspension or Debarment:* Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 12.4. *Taxes:* Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold District harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case District is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish District with proof of payment of taxes on these earnings.
- 12.5. *Records Maintenance:* Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and

records available to District for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

- 12.6. *Conflict of Interest:* Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by District, Consultant shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with District within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.
- 12.7. *Statutory Compliance/Living Wage Ordinance:* Consultant agrees to comply, and to require compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 12.8. *Nondiscrimination:* Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 12.9. *Assignment of Rights:* Provided Consultant has received all undisputed amounts owed for its services, Consultant assigns to District all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to District in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as District may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written

permission of District. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of District. District acknowledges and agrees that the documents and data to be provided by Consultant under the Agreement may contain certain design details, features and concepts from Consultant's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of Consultant. Nothing herein shall be construed as a limitation on Consultant's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

12.10. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement (the "Instruments of Service") shall be the property of District provided Consultant has received all undisputed amounts due for its services. District shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to District all such documents, which have not already been provided to District in such form or format as District deems appropriate. Such documents shall be and will remain the property of District without restriction or limitation. District shall indemnify, defend and hold Consultant harmless from any claims arising from District's use of the Instruments of Service for any purpose other than the purpose they were prepared for under this Agreement. Consultant may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of District.

12.11. *District Liability:* District is a separate legal entity from Sonoma County Water Agency, operated under contract by Sonoma County Water Agency. To the extent any work under this Agreement relates to District activities, Consultant shall be paid exclusively from District funds. Consultant agrees that it shall make no claim for compensation for Consultant's services against Sonoma County Water Agency funds and expressly waives any right to be compensated from other funds available to Sonoma County Water Agency.

### **13. PREVAILING WAGES**

13.1. *General:* Consultant shall pay to any worker on the job for whom prevailing wages have been established an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and

determined by the Director of the State Department of Industrial Relations and District to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. Consultant shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed, in addition to all other job site notices prescribed by regulation. Copies of the prevailing wage rate of per diem wages are on file at District and will be made available to any person upon request.

- 13.2. *Subcontracts*: Consultant shall insert in every subcontract or other arrangement which Consultant may make for performance of such work or labor on work provided for in the Agreement, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code section 1775(b)(1), Consultant shall provide to each Subcontractor a copy of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
- 13.3. *Compliance Monitoring and Registration*: This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Consultant shall furnish and shall require all subcontractors to furnish the records specified in Labor Code section 1776 (e.g. electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly (Labor Code 1771.4 (a)(3)). Consultant and all subcontractors performing work that requires payment of prevailing wages shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any services under this Agreement.
- 13.4. *Compliance with Law*: In addition to the above, Consultant stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code sections 1725.5, 1775, 1776, 1777.5, 1813, and 1815 and California Code of Regulations, Title 8, section 16000, et seq.

#### **14. DEMAND FOR ASSURANCE**

- 14.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other

agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 14 limits District's right to terminate this Agreement pursuant to Article 6 (Termination).

## 15. **ASSIGNMENT AND DELEGATION**

15.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

15.2. *Subcontracts:* Notwithstanding the foregoing, Consultant may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement. Approved subconsultants are as follows:

<i>Name</i>	<i>Type of Services</i>	<i>Prevailing Wages Apply? Y/N</i>
TJC Engineering	Structural and electrical	N
Kleinfelder, Inc.	Hazard analysis	Y

15.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 15.2 will be utilized, Consultant may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 15.3. The following provisions apply to any subcontract entered into by Consultant other than those listed in Paragraph 15.2:

- a. Prior to entering into any contract with subconsultant, Consultant shall obtain District approval of subconsultant.
- b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of District in substantially the same form as that contained in Article 7 (Indemnification), (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.
- c. Outreach to Disadvantaged Business Enterprises (DBE) is required for additional subconsultants. Contact the Grant Manager for further information prior to entering into any contract with a subconsultant.

- 15.4. *Summary of Subconsultants' Work:* Consultant shall provide District with a summary of work performed by subconsultants with each invoice submitted under Paragraph 4.3. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

**16. MEDIATION OF DISPUTES**

- 16.1. If a dispute arises out of or relates to this Agreement, or an alleged breach thereof, and if the dispute cannot be settled through negotiation, before resorting to litigation, District and Consultant agree first to try in good faith to settle the dispute by mediation. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. If the dispute also involves claims against or by a construction contractor who has used or otherwise relied on any work product of Consultant, the Parties agree that the mediation required by this Article 16 will include the construction contractor as a participant. The cost of mediation shall be equally shared by the participating parties. Unless the participation of a construction contractor is required and that indispensable contractor is subject to an incompatible stipulation with District with regard to the same matters, the parties further agree that:
- a. The mediation shall be conducted in Santa Rosa, California.
  - b. Unless otherwise agreed to in writing by the parties participating in the mediation, the mediation shall be concluded no later than sixty (60) days after the first mediation session. If the dispute has not been resolved at that time, any party may elect at that time to pursue litigation.
  - c. The parties agree to exchange all relevant non-privileged documents before the first scheduled mediation session.

**17. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS**

- 17.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified in Paragraph 3.2.
- 17.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic

transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 16.

## **18. MISCELLANEOUS PROVISIONS**

- 18.1. *No Bottled Water:* In accordance with District Board of Directors Resolution No. 09-0920, dated September 29, 2009, no District funding shall be used to purchase single-serving, disposable water bottles for use in District facilities or at District-sponsored events. This restriction shall not apply when potable water is not available.
- 18.2. *No Waiver of Breach:* The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 18.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 18.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 18.5. *No Third-Party Beneficiaries:* Except as provided in Article 7 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 18.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.



- 18.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 18.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 18.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 18.10. *Time of Cardinal Importance:* Consultant acknowledges that time is and shall be of cardinal importance to this Agreement and every provision hereof and shall perform its services as expeditiously as possible, consistent with the Standard of Care and the orderly progress of the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

TW 19/20-059

By: \_\_\_\_\_  
Sonoma County Water Agency  
Division Manager - Administrative  
Services

Approved as to form:

By: \_\_\_\_\_  
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with  
District

Date/TW Initials: \_\_\_\_\_

**Sonoma Valley County Sanitation District**

**Water Systems Consulting, Inc.**, a California  
corporation

By: \_\_\_\_\_  
Grant Davis  
General Manager  
Authorized per Board of Directors  
Action on September 22, 2020

By: \_\_\_\_\_  
\_\_\_\_\_  
(Please print name here)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DIR Registration #: 1000048177

# **Exhibit A**

## **Scope of Work**

### **1. GENERAL**

- 1.1. Consultant agrees to perform obligations described in this Agreement and to furnish necessary engineering skills, services, labor, supplies, supervision, and material required to perform and complete the Project.
- 1.2. By execution of this Agreement, Consultant acknowledges that it has carefully examined the Project site and has satisfied itself of local and special conditions affecting this Scope of Work. Tests, survey results, geotechnical reports, or other data or information, whether furnished by District, or referenced in this Agreement, are for the Consultant's convenience. District does not guarantee that such tests or preliminary investigations or other data and information are accurate and assumes no responsibility whatsoever as to their accuracy or interpretation. Consultant shall satisfy itself as to the accuracy or interpretation of such tests or survey results or other information or data.

### **2. TASKS**

- 2.1. Task 1: Cost Estimates
  - a. Prepare a Statement of Probable Construction Costs broken down by bid item, and revise as required herein. Provide estimated quantities for unit priced items.
- 2.2. Task 2: Design Services
  - a. Design:
    - i. Provide background document request to Sonoma Water for record drawings, geotechnical reports, condition assessment records and other applicable documents, as available. Review documents provided by Sonoma Water and incorporate findings into the design.
    - ii. Prepare Project design, as recommended in District-approved Basis of Design technical memorandum (TM).
    - iii. Identify and perform up to 2 site investigations on the same day as 2 of the design review meetings, with up to 2 design team members, for purpose of developing the Project design.
    - iv. Pending approval by funding agency and receipt of separate written authorization to proceed by District, drill one 50-ft boring to provide additional required information for the site-specific ground motion analysis.
    - v. Prepare Site-Specific Ground Motion Hazard Analysis. Provide site-specific analysis in compliance with ASCE 7-16 and summarize the results of site-specific ground motion assessment in a brief TM.

- vi. Prepare a Basis of Design TM. The Basis of Design TM shall include the following components: (1) Project purpose and background; (2) Site-specific project design criteria table for seismic upgrades including applicable seismic design parameters and applicable codes; (3) Summary of Project improvements that includes a Project description, plan and section drawings of the clarifiers, a statement of probable construction costs, and a preliminary project schedule through construction; (4) a list of recommended clarifier manufacturers; and (5) Site-Specific Ground Motion Hazard Analysis TM as an attachment.
- vii. Prepare a Design Notebook. The Design Notebook shall be a PDF file containing, as appropriate, copies of the Basis of Design TM, stamped and signed design calculations, schematic layouts, and supporting information pertaining to the design of the Project.
- viii. Prepare a detailed construction cost estimate for the Project as described in Paragraph 2.1.
- ix. Prepare a construction schedule showing the anticipated timeframe for completing construction of major units. Use a simple bar chart approach for each item and indicate the anticipated critical path of construction.
- b. Additional Requirements:
  - i. Identify requirements, if any, which District may not have identified. Applicable requirements include, but are not limited to, provisions in the environmental documents, including the Mitigation Monitoring Plan (if applicable), permits (if applicable), right-of-way agreements, and local ordinances.
  - ii. Incorporate known applicable requirements into Project.
- c. Design Stages and Meetings:
  - i. Progress with design in the following stages, and include the following listed elements:
    - a) Kick Off Meeting: Discuss Project approach, data gaps, scope, and schedule.
    - b) 30%: Project design criteria shall be fully defined in the Basis of Design TM and preliminary sketches and drawings shall be available.
    - c) 60%: Draft drawings shall describe the general size, nature, and complexity of the Project and indicate right-of-way; alignment and location of facilities should be final; draft specifications shall be completed with sufficient detail to allow District review and comment. Determine if the existing concrete foundation block is adequate to support the loading conditions identified in the Basis of Design TM and provide preliminary sizing for the replacement center column support concrete as needed.
    - d) 90%: Prepare drawings indicating the scope, extent, and character of the work to be provided by the contractor. Specifications and

drawings shall be 90% completed and rights-of-way, permits, and regulatory considerations shall be resolved.

- e) 99%: Changes and modifications from District shall be incorporated, any outstanding issues resolved, and specifications and drawings essentially complete.

d. Meeting Information:

e. Meeting Information:

- i. Arrange, attend, prepare agendas for, and conduct meetings at each design stage.
- ii. At meetings, discuss the progress and direction of the design. Advise District in writing how District comments impact Project scheduling and cost.
- iii. Prepare meeting minutes for each meeting.
- iv. Arrange and attend a meeting with District staff to discuss modifications to District's Operations and Maintenance Manual.
- v. Meetings shall be held at District's Office, 404 Aviation Boulevard, Santa Rosa, California, unless an alternative meeting format (e.g. video conference call, etc.) is approved or directed by District. As warranted, District and Consultant will consider and coordinate alternate meeting formats in response to prevailing community health conditions and public health orders related to COVID-19.

### 2.3. Task 3: Drafting Services

- a. Prepare drawings necessary for bidding and construction of the Project using current District AutoCAD standard at time of Agreement execution. Clarifier plan, section, and detail drawings shall utilize PDF record drawing backgrounds with AutoCAD notations to identify the scope of project improvements. Earlier compatible versions or alternate compatible AutoDesk vertical products may only be used upon written approval of District. Include the following with sufficient detail to describe construction of the Project for Project advertisement and bidding purposes:
  - i. Title sheet with location map, vicinity map, index to drawings, and legend (abbreviations, symbols, etc.).
  - ii. Plans.
  - iii. Profiles (where applicable).
  - iv. Sections.
  - v. Construction details.
  - vi. Other drawings as may be needed for construction.
- b. Use District-provided template drawings, title blocks, and border drawings. Basic layers and line types are part of template drawings and are recommended where applicable.

- c. Prepare plan and profile drawings using the primary scale of: horizontal 1" = 40' and vertical 1" = 4'. Obtain prior District approval before preparing plan or profile drawings in any other scale.
- d. Prepare finished contract drawings and maps on a durable, dimensionally stable vellum 22" x 34" gross size. No hand-drawn media is allowed.
  - i. Finished contract drawings shall also be supplied in native AutoCAD format as specified in 2.3 along with supporting files such as fonts, Xref and image files, point data, plotter and/or pen style table configuration files.
  - ii. Electronic drawing file names shall be at the direction of District's Drafting/GIS Section. Xref files shall have filename with an "X" prefix (i.e., X\_ExTopo for original existing topographic file used as base reference file).
  - iii. Existing and design features shall be represented spatially accurate in "real world model space" in the CAD files. Coordinate information shall be preserved in its true and original orientation in real world space (X axis= East Coordinates, Y axis = North Coordinates, Z axis =Elevation; all in US Survey Feet Units; Scale 1:1). Data files, such as topo files and point files, may be "Xrefed" provided the Xref file is inserted at 0,0,0 and no rotation is imposed on the file.
  - iv. Each drawing file shall contain a layer named "CadNotes." This layer shall be a non-plot layer and shall contain pertinent "metadata" that includes, but is not limited to, the following:
    - a) Coordinate or projection basis.
    - b) Relevant survey, data dates.
    - c) Data sources, references.
    - d) Design notes, assumptions, or other relevant information useful to design review.
  - v. Prepare construction detail drawings in the same manner as described in this paragraph 2.3 such that each detail item is represented in its full size in model space and is represented in a scale and orientation to appropriately and adequately convey the necessary information for construction on layout space.
  - vi. District will accept electronic drawing files with multiple "drawings" or "Sheet" layouts. Tab layouts are to be setup as follows:
    - a) Each layout tab's label shall be the drawing name (i.e. C1, G1, D1, P1, etc.) and therefore only include one sheet per layout tab. The layouts shall be set to the standard 22" x 34" sheet at a 1:1 scale.
- e. Minimize the use of notes on drawings. Specifications of any type shall be written in the specifications and shall not be added to drawings.
- f. Use match lines with appropriate sheet numbers.
- g. Use lettering size no smaller than a 0.12-inch tall for construction notes and data.

- h. Make drawings easily readable when reduced to 11" x 17."
- i. Reconcile drawings with specifications to minimize redundancies and avoid conflicts.
- j. Below is a list of anticipated drawings for the Project. Sheets listed in *italics* with two asterisks shall utilize record drawing PDF backgrounds with CAD annotations to indicate components requiring replacement:

Sheet No.	Drawing No.	Drawing Description
<b>General</b>		
1	G01	Vicinity Maps, Sheet Index
2	G02	Abbreviations, Notes, Legends
3	G03	Work area, access plan, general notes
<b>Demolition</b>		
4	D01	Typical Clarifier Demolition Plan
5	D02	Typical Clarifier Demolition Section
6	D03	Clarifier Demolition Details/Photos
<b>Process</b>		
7	P01	Typical Clarifier Plan
8	P02	Typical Clarifier Section
9	P03	Clarifier Details/Photos
<b>Structural</b>		
10	S01	Structural Notes
11	S02	Structural Details 1
12	S03	Structural Details 2
13	S04	Clarifier Plan
14	S05	Clarifier Section
15	S06	Clarifier Details/Photos
•		
13	E01	Electrical Notes/Legend
14	E02	Electrical Plan
15	E03	Electrical Details
16	E04	Single Line Diagram
17	E05	Controls Diagrams
Instrumentation		
18	I01	P&ID Symbols, Legend and Abbreviations
19	I02	P&ID – Secondary Clarification

#### 2.4. Task 4: Specifications Preparation

- a. Assist District's Project Manager in completing District's Project Manual Initiation Questionnaire.
- b. Prepare Divisions 2 through 50 (Technical Specifications), as appropriate, of the Project Manual as necessary for construction of the Project in conformance with the Project Manual concept of the Construction Specification Institute (CSI), using District's template, CSI's Project Resource Manual, and the 2018 edition of CSI's MasterFormat, including SectionFormat and PageFormat.
  - i. At the 60% design level major equipment specifications shall be provided along with a complete outline of anticipated specification sections. At the 90% design level and beyond, a complete set of specifications shall be provided.
  - ii. Up to 8 copies of the issued for bid specifications shall be provided as requested by Sonoma Water.
- c. Comply with applicable provisions of the Public Contract Code including, but not limited to, formal and informal bid procedures and the avoidance of closed proprietary specifications (where no substitutions are allowed). Consultant assumes that District's policies and procedures are compliant with Public Contract Code and are accurately reflected in the Division 0 "Front End Documents."
- d. Assist District to develop justification memos for proposed single-source products or materials; for special qualification of bidders, manufacturers, installers, or other professionals performing construction work for the Project; and for other special circumstances that require justification to District's Board of Directors.
- e. Provide bid item descriptions for inclusion in Division 1. Method of payment for materials, equipment, and work required to complete Project shall be described clearly.
- f. In coordination with District's Project Manager, reconcile redundancies and conflicts with District-prepared Division 0 and Division 1 requirements.

2.5. Task 5: Assistance During Bidding and Construction

- a. For bidding:
  - i. Answer questions submitted by District ("questions") during bid advertisement period.
  - ii. Communicate only through District.
  - iii. Hand-deliver or email copies of bidder questions (non-District questions) directed to Consultant to District as soon as practicable.
  - iv. Alert District to potential impacts, if any, associated with questions including, but not limited to, impacts on schedule and cost.
  - v. Upon request from District, prepare addenda to clarify, correct, or change the technical specifications or drawings in accordance with the following:



- a) Paragraphs 2.3 and 2.4.
  - b) District-provided drafting standards and standard form for addenda.
- b. For construction:
  - i. Assist District by providing engineering and related services after the receipt of construction bids as requested by District.
  - ii. Attend preconstruction conference.
  - iii. Assist District by answering up to 12 request(s) for information (RFIs), as requested by District.
  - iv. Submittal Review:
    - a) Review contractor's submittals of information and shop drawings for the Project and either mark "No Exceptions Taken," "Make Corrections Noted," "Revise and Resubmit," or "Rejected" on each submittal. Provide District with a brief written narrative of what is required from the contractor for items Consultant marks on each submittal response.
    - b) Copies of submittals reviewed shall be stamped, dated, and signed by the person performing the review.
    - c) Review items that have been submitted by the contractor as a substitution or an "approved equal" for specified items. Each substituted item shall be reviewed to determine if it meets the performance requirements specified in the Project specifications, and to determine if it is compatible with other components of the operating system (e.g. electrical connections, size). Consult with District's Project Manager regarding acceptability of the proposed substitution.
    - d) Upon completion of review, return the submittals with any written narratives to District.
    - e) Up to 12 submittals and resubmittals are budgeted for review.
  - v. Upon request from District, provide construction site visits. Write summary memo of each site visit requested and provide to District 2 working days after date of site visit. Up to 2 site visits are planned in the scope of work for Consultant's Project Manager and up to 2 site visits are planned for the Consultant's Project Structural Lead.
  - vi. Review and comment on proposed change order(s), if any. Provide comments to District in writing within 2 working days after receipt of the proposed change order(s). Up to one change order has been budgeted for review.
  - vii. Upon request from District, assist District with final inspection.

## 2.6. Task 6: Schedule and Submittal of Documents

- a. Perform services and submit documents to District for review and approval in accordance with the schedule included in Exhibit B (Schedule and Submittals).

- b. Submittal requirements:
  - i. Submit one electronic copy in PDF format (emailed, USB flash drive, or via internet) of each final deliverable to District, unless noted otherwise.
  - ii. Comply with requirements of Article 11 (Content Online Accessibility).
  - iii. Provide electronic copy in PDF format as well as native AutoCAD dwg format at each design phase as described in Exhibit B. Include CTB or STB plot configuration file with electronic submittal to ensure correct and intended image quality when plotting from file.
  - iv. If changes that District has not previously approved are made to the drawings or specifications after the 99% design review meeting, submit drawing(s) or specifications to District for approval prior to preparing the final submittal.
- c. Electronic media formats:
  - i. Survey information and drawings: Provide in electronic media format compatible with current District AutoCAD standard in drawing format (.DWG). Provide plot style table files.
  - ii. Technical Specifications and Operation and Maintenance Manual(s) modifications (including tables, charts, and drawings) and other documents, if any: Provide in electronic media format compatible with Microsoft® Word 2013.
- d. Final Drawing Submittal Requirements:
  - i. Prepare finished contract drawings and maps on vellum, 22" x 34" gross size. Drawings shall be "wet" stamped and signed by the appropriate disciplined professional. [change to "Engineer(s) of Record?"]
  - ii.
  - iii. The final (100%) AutoCAD submittal shall consist of files with filenames specified by District's Drafting/GIS Section and include embedded digital professional stamps. Drawings shall have filenames displayed per District-provided standards. Transmit to District via AutoCAD ETRANSMIT.
  - iv. Final submittal shall also include a composite PDF document of the drawing files formatted for half size (11" x 17") as well as full size (22" x 34").
  - v. .The schedule in Exhibit B (Schedule and Submittals) is based upon timely review and decision making by District. Delays in the schedule caused by District will be cause for consideration of time extensions.

## 2.7. Optional Task 7: Additional Services

- a. Do not proceed with this task unless requested in writing by District's Project Manager.
- b. Perform additional services as requested by District to support the Project. The additional services will be agreed to by Consultant and District and

described in writing by District. Deliverables and due dates to be determined.

## Exhibit B

### Schedule and Submittals

<b>MILESTONE</b>	<b>DOCUMENTS TO BE SUBMITTED</b>	<b>DATE or CALENDAR DAYS</b>
<b>Notice to Proceed with Design</b>	-	immediately upon execution of this Agreement
<b>Kick-off Meeting Submittal</b>	<ul style="list-style-type: none"> <li>• 10 copies of Kick-off meeting agenda</li> <li>•</li> </ul>	3 calendar days prior to Kick-off meeting
<b>Kick-off Meeting</b>	-	Within 8 calendar days following Notice to Proceed with Design
<b>Kick-off Meeting Minutes</b>	<ul style="list-style-type: none"> <li>• One electronic copy of meeting minutes</li> </ul>	within 7 calendar days of Kick-off Meeting
<b>Basis of Design and 30% Plans Submittal</b>	<ul style="list-style-type: none"> <li>• Assumptions and preliminary conclusions to be included in the draft Design Report</li> <li>• 10 copies of Design Workshop agenda</li> </ul>	within 50 calendar days after Kick-off meeting
<b>Basis of Design and 30% Plans Review Meeting</b>	<ul style="list-style-type: none"> <li>• 8 sets of half-size hard copy drawings</li> <li>• Technical memorandum summarizing design parameters</li> <li>• Construction cost estimate</li> <li>• Preliminary Statement of Probable Construction Costs</li> <li>• Draft Table of Contents for specifications</li> </ul> 10 copies of 30% design review meeting agenda	within 7 calendar days after Basis of Design Submittal
<b>Design Workshop Minutes</b>	One electronic copy of meeting minutes	within 7 calendar days of Basis of Design and 30% Plans Review Meeting
<b>Final Basis of Design TM</b>	<ul style="list-style-type: none"> <li>•</li> <li>• Submit final Basis of Design TM based incorporating Agency review comments</li> </ul>	within 14 calendar days after Basis of Design and 30% Plans Review meeting
	-	
<b>60% Design Submittal</b>	<ul style="list-style-type: none"> <li>• 8 sets of half-size hard copy drawings</li> <li>• Technical specifications</li> <li>• Preliminary Construction schedule</li> <li>• Revised Preliminary Statement of Probable Construction Costs</li> <li>• 10 copies of 60% design review meeting agenda</li> <li>•</li> </ul>	25 calendar days after Basis of Design 30% Design Review Meeting

<b>MILESTONE</b>	<b>DOCUMENTS TO BE SUBMITTED</b>	<b>DATE or CALENDAR DAYS</b>
<b>60% Design Review Meeting</b>		within 7 calendar days after 60% Design Submittal
<b>60% Design Review Meeting Minutes</b>	One electronic copy of meeting minutes	within 7 calendar days of 60% Design Review Meeting
<b>90% Design Submittal</b>	<ul style="list-style-type: none"> <li>• 8 sets of half-size hard copy drawings</li> <li>• Technical specifications</li> <li>• Bid item descriptions</li> <li>• Revised Preliminary Statement of Probable Construction Costs</li> <li>• 10 copies of 90% design review meeting agenda</li> </ul>	21 calendar days after 60% Design Review Meeting
<b>90% Design Review Meeting</b>	-	At least 28 days but within 35 calendar days after 90% Design Submittal
<b>90% Design Review Meeting Minutes</b>	One electronic copy of meeting minutes	within 7 calendar days of 90% Design Review Meeting
<b>99% Design Submittal</b>	<ul style="list-style-type: none"> <li>• 8 sets of half-size hard copy revised drawings</li> <li>• Technical specifications</li> <li>• Bid item descriptions</li> <li>• Statement of Probable Construction Costs</li> <li>• 10 copies of 99% design review meeting agenda</li> </ul>	within 21 calendar days after 90% Design Review Meeting
<b>99% Design Review Meeting</b>	-	within 30 calendar days after 99% Design Submittal
<b>99% Design Review Meeting Minutes</b>	One electronic copy of meeting minutes	within 7 calendar days of 99% Design Review Meeting
<b>100% Design Submittal</b>	<ul style="list-style-type: none"> <li>• 8 sets of half-size hard copy revised drawings</li> <li>• Technical specifications</li> <li>• Bid item descriptions</li> <li>• Statement of Probable Construction Costs</li> <li>10 copies of 100% design review meeting agenda</li> </ul>	within 14 calendar days after 99% Design Review Meeting
<b>100% Design Review Meeting</b>	-	within 7 calendar days after 100% Design Submittal
<b>100% Design Review Meeting Minutes</b>	One electronic copy of meeting minutes	within 7 calendar days of 100% Design Review Meeting

<b>MILESTONE</b>	<b>DOCUMENTS TO BE SUBMITTED</b>	<b>DATE or CALENDAR DAYS</b>
<b>Final Submittal</b>	<ul style="list-style-type: none"> <li>• Complete set of revised and final stamped and wet signed original drawings</li> <li>• Complete set of electronic files with supporting files, plus full and half-size PDFs</li> <li>• Complete set of revised and final technical specifications</li> <li>• Stamped and signed Section 00007 (Seals Page)</li> <li>• Statement of Probable Construction Costs</li> <li>• Design Notebook</li> </ul>	within 7 calendar days after 100% Design Review Meeting
<b>Operation and Maintenance Manual(s) Meeting</b>	-	At least 60 days prior to Contractor Substantial completion
<b>Draft Addenda submittals, if applicable</b>	as appropriate	At least 8 calendar days prior to Project bid opening
<b>Final Addenda submittals, if applicable</b>	as appropriate, submit original drawing(s)	At least 7 calendar days prior to Project bid opening
<b>Operation and Maintenance Manual(s) Modifications</b>	Electronic PDF of final Operation and Maintenance Manual(s) modifications	30 calendar days prior to system start-up

## Exhibit C

### Schedule of Rates

Labor Classification	Hourly Rate
<b>Engineers / Project Managers / Planners / Hydrogeologists</b>	
Engineering Intern	\$115
Assistant	\$135
Staff I	\$145
Staff II	\$155
Staff III	\$165
Associate I	\$175
Associate II	\$185
Associate III	\$195
Senior I	\$215
Senior II	\$225
Senior III	\$235
Principal I	\$245
Principal II	\$265
Principal III	\$290
<b>Outreach and Communications</b>	
Communications Support I	\$110
Communications Support II	\$135
Communications Support III	\$155
Outreach Specialist/Facilitator I	\$170
Outreach Specialist/Facilitator II	\$210
Outreach Specialist/Facilitator III	\$265
<b>CAD Design Services</b>	
Technician/Designer I	\$115
Technician/Designer II	\$125
Technician/Designer III	\$140
<b>Inspection Services</b>	
Inspector I	\$120
Inspector II	\$135
Inspector III	\$160
Inspector (Prevailing Wage)	\$165
<b>Administrative Services</b>	
Administration/Clerical I	\$115
Administration/Clerical II	\$125
Administration/Clerical III	\$135

3% mark-up on direct expenses; 10% mark-up for sub-contracted services

Standard mileage rate \$0.58 per mile (or current Federal Mileage Reimbursement Rate)

Rates are subject to revision as of January 1, 2021

# Exhibit D

## Estimated Budget for Scope of Work

Task No.	Task Description	WSC										TJC	Kleinfeder	ALL FIRMS
		Principal in Charge & QA/QC	Project Manager	Project Engineer	CAD Technician	Project Controller	Project Coordinator	WSC Labor Hours	WSC Labor Fee	Expenses	WSC Fee	Labor Fee	Labor Fee	Total Fee
	Billing rates, \$/hr	\$265	\$235	\$185	\$140	\$135	\$115							
1	Cost Estimates													
1.1	Opinion of Probable Construction Cost	4	8	24				36	\$ 7,380	\$ 200	\$ 7,580			\$ 7,580
	SUBTOTAL	4	8	24	0	0	0	36	\$ 7,380	\$ 200	\$ 7,580	\$ -	\$ -	\$ 7,580
2	Design Services													
2.1	Background Document Review	2	4	8				14	\$ 2,950	\$ 100	\$ 3,050	\$ 2,200		\$ 5,250
2.2	Site Investigations		4	2				6	\$ 1,310	\$ -	\$ 1,310			\$ 1,310
2.3	Geotechnical Field Work							0	\$ -	\$ -	\$ -			\$ -
2.4	Site Specific Ground Motion Hazard Analysis	2	2	4				8	\$ 1,740	\$ -	\$ 1,740		\$ 19,250	\$ 20,990
2.5	Basis of Design TM	4	8	24				44	\$ 8,300	\$ 200	\$ 8,500	\$ 5,500		\$ 14,000
2.6	Design Notebook			4				4	\$ 740	\$ -	\$ 740			\$ 740
2.7	Final Design	12	32	72		24		140	\$ 27,260	\$ 900	\$ 28,160	\$ 24,100		\$ 52,360
2.8	Design Review Meetings		32	24			4	60	\$ 12,420	\$ 300	\$ 12,720	\$ 3,300		\$ 16,020
	SUBTOTAL	20	82	138	0	24	12	276	\$ 54,720	\$ 1,500	\$ 56,220	\$ 35,200	\$ 19,250	\$ 110,670
3	Drafting Services													
3.1	Drafting Services				172			172	\$ 24,080	\$ 600	\$ 24,680			\$ 24,680
	SUBTOTAL	0	0	0	172	0	0	172	\$ 24,080	\$ 600	\$ 24,680	\$ -	\$ -	\$ 24,680
4	Specifications Preparation													
4.1	Specifications Preparation	6	12	30			40	88	\$ 14,560	\$ 400	\$ 14,960	\$ 5,500		\$ 20,460
4.2	Project Manual Questionnaire		4					4	\$ 940	\$ -	\$ 940			\$ 940
	SUBTOTAL	6	16	30	0	0	40	92	\$ 15,500	\$ 400	\$ 15,900	\$ 5,500	\$ -	\$ 21,400
5	Assistance During Bidding and Construction													
5.1	Respond to bidder questions	2	12	4	6			24	\$ 4,930	\$ 100	\$ 5,030	\$ 1,100		\$ 6,130
5.2	Attend Preconstruction Meeting		6					6	\$ 1,410	\$ -	\$ 1,410			\$ 1,410
5.3	Construction Site Visits		12					12	\$ 2,820	\$ 100	\$ 2,920			\$ 2,920
5.4	Submittal Review	1	12	36				49	\$ 9,745	\$ 200	\$ 9,945	\$ 2,750		\$ 12,695
5.5	RFI Review	1	12	28				41	\$ 8,265	\$ 200	\$ 8,465	\$ 3,300		\$ 11,765
5.6	Change Order Review	1	6	6				13	\$ 2,785	\$ 100	\$ 2,885	\$ 550		\$ 3,435
5.7	Design Clarifications		4	6				10	\$ 2,050	\$ 100	\$ 2,150	\$ 550		\$ 2,700
5.8	Record Drawings			4	16			20	\$ 2,980	\$ 100	\$ 3,080			\$ 3,080
5.9	Conformed Documents		4	4	12			20	\$ 3,360	\$ 100	\$ 3,460			\$ 3,460
	SUBTOTAL	5	68	88	34	0	0	195	\$ 38,345	\$ 1,000	\$ 39,345	\$ 8,250	\$ -	\$ 47,595
6	Schedule and Submittal of Documents													
6.1	Project Scheduling		10	4				14	\$ 3,090	\$ 100	\$ 3,190			\$ 3,190
6.2	Submittal of Documents		14	8			4	26	\$ 5,230	\$ 100	\$ 5,330			\$ 5,330
	SUBTOTAL	0	24	12	0	0	4	40	\$ 8,320	\$ 200	\$ 8,520	\$ -	\$ -	\$ 8,520
7	Additional Services (Optional Task)													
7.1	Allowance Task for Services Requested by the District							0	\$ -	\$ 10,000	\$ 10,000			\$ 10,000
	SUBTOTAL	0	0	0	0	0	0	0	\$ -	\$ 10,000	\$ 10,000	\$ -	\$ -	\$ 10,000
	COLUMN TOTALS	35	198	292	206	24	56	811	\$ 148,345	\$ 13,900	\$ 162,245	\$ 48,950	\$ 19,250	\$ 230,445



# Exhibit E

## Federal Funding Requirements

### FEDERAL REQUIREMENTS – FEMA *Construction and Services Agreements* [Revise date 10-1-18]

#### 1. DEFINITIONS

- 1.1 Government** means the United States of America and any executive department or agency thereof.
- 1.2 FEMA** means the Federal Emergency Management Agency.
- 1.3 Third Party Subcontract** means a subcontract at any tier entered into by Contractor or any subcontractor, financed in whole or in part with federal assistance derived from the Federal Emergency Management Agency.
- 1.4** For purposes of this Exhibit, **Contractor** means the Contractor or Consultant as identified in the Agreement, and shall sometimes be referred to as “contractor.”
- 1.5 Agreement** means that certain Agreement between the Sonoma County Water Agency (“Owner”) and Contractor, and to which this Exhibit is made a part.

#### 2. FEDERAL REQUIREMENTS

- 2.1** Contractor acknowledges that FEMA financial assistance will be used to fund this Agreement.
- 2.2** Contractor shall at all times comply with all applicable federal laws, regulations, executive orders, Office of Budget and Management circulars, and FEMA policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 C.F.R.<sup>1</sup> 200.317 through 200.326 and Appendix II to 2 CFR Part 200—“Contract Provisions for non–Federal Entity Contracts Under Federal Awards,” which is included herein by reference; and including the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, the Civil Rights Act of 1964 (Title VI); the Civil Rights Act of 1968 (Title VIII); the Drug-Free Workplace Act of 1988; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; the Education Amendments of 1972 (Title IX); the Equal Opportunity in Education Act; the Energy Policy and Conservation Act; the False Claims Act; the Hotel and Motel Fire Safety Act of 1990; the National Environmental Policy Act; the Rehabilitation Act of 1973; the Whistleblower Protection Act; the Hatch Act (5 U.S.C.<sup>2</sup> 1501 et seq.); and all related and Department of Homeland Security--mandated federal regulations, including 44 CFR Part 7.

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<sup>1</sup> Code of Federal Regulations (“CFR”).

<sup>2</sup> United States Code (“USC”).

- 2.3** Whether or not expressly set forth herein, all contractual provisions required by FEMA are hereby incorporated by reference. In the event of any conflict between any provision of this Agreement or any FEMA term, condition, or requirement, the stricter standard shall apply. Contractor shall refer any inconsistency or perceived inconsistency between this Agreement and any federal requirement to Owner for guidance. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause Owner to be in violation of any FEMA term, condition, or requirement.
- 2.4** Contractor acknowledges that this Agreement may be subject to grant assurances mandated by funding federal agencies. In such event, this Agreement shall be subject to and subordinate to all such grant assurances in effect at all times during the term of this Agreement. Any grant assurances mandated by any federal funding agency for inclusion after the execution date of this Agreement shall be deemed by the parties to have been incorporated herein.
- 2.5** Contractor must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
- 2.6** The Government shall enjoy the right to seek judicial enforcement of any law, regulation, condition, or provision stated herein.
- 2.7** Drug-free workplace. Contractor acknowledges Owner maintains a drug-free workplace plan. Contractor shall comply with applicable requirements of that plan and otherwise comply with applicable requirements of the Drug-Free Workplace Act of 1988 (41 USC 701-707).
- 2.8** Contractor shall ensure it has the necessary processes and systems in place to comply with applicable federal reporting requirements, including those contained in 2 CFR Part 170 as applicable.
- 2.9** Whistleblower Protections. Contractor shall inform all its employees in writing of the rights and remedies provided under the federal Whistleblower Protection Act, including 41 USC 4712.
- 2.10** Repair or Construction Activity. For all repair or construction activity done pursuant to this Agreement (if applicable), all such repair or construction shall be carried out in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards, including those required pursuant to 44 CFR 206.400.
- 2.11** The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

### **3. ACCESS TO RECORDS**

- 3.1** Contractor and its successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Government access to records, accounts, documents, information, facilities, and staff, including

compliance review, investigation, evaluation, documentation and reporting requirements.

- 3.2** The Contractor agrees to provide Owner, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are related to this Agreement, for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3.3** The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
- 3.4** The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than five years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date all projects, programs, and close outs are completed, except in the event of audit, litigation, or settlement of claims arising from this Agreement, in which case, Contractor agrees to maintain same until Owner, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Contractor shall grant Owner the option of retention of the records, books, papers, and documents in unalterable, electronic form if Contractor elects to dispose of said documents following the mandatory retention period.
- 3.5** The requirements set forth above are all in addition to, and should not be considered to be in lieu of, any more stringent requirement set forth in the Agreement.

#### **4. DEBARMENT AND SUSPENSION**

- 4.1** This Agreement is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR 180.995), or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935). Covered transactions shall not be entered into with excluded or disqualified persons or with parties listed on the Government's Excluded Parties List System in the System for Award Management (SAM). The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. (2 CFR Part 200 Appendix II, (I)). No entity, including subcontractors, may receive any federal funds through this Agreement unless the entity has provided its unique entity identifier to Owner.
- 4.2** Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or Executive Order 12689, and that it is not on the Excluded Parties List System in the System for Award Management (SAM) or on any comparable list of precluded persons, entities, or facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party

who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or any federal regulation, including 2 CFR Part 200. Gov. Code § 4477.

- 4.3** The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Contractor agrees to the provisions of Exhibit 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit 1, Contractor is the “prospective lower tier participant.”
- 4.4** The Contractor agrees to include the above paragraphs in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- 4.5** This certification is a material representation of fact relied upon by Owner. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to Owner, the Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 4.6** The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- 5.1** Owner and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Government, the Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Owner, Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement.
- 5.2** The Contractor agrees to include the above clause in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**6. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (all construction contracts awarded meeting the definition of “federally assisted construction contract” under 41 CFR 61-1.3)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60-1.4 is hereby incorporated by reference.

During the performance of this Agreement, Contractor agrees as follows:

- 6.1** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 6.2** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 6.3** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 6.4** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 6.5** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6.6** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6.7** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order

11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 6.8** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **7. NONDISCRIMINATION CLAUSE**

- 7.1** Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, denial of family care leave, or based on any other prohibited basis.
- 7.2** Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- 7.3** Contractor shall comply with the applicable provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 7.4** The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **8. CONTRACT WORK HOURS AND SAFETY STANDARDS** (all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

**Compliance:** Contractor and all subcontractors shall comply with the Contract Work Hours and Safety Standards Act, 40 USC 3701 through 3708 (including sections 3702 and 3704), as supplemented by Department of Labor regulations at 29 CFR Part 5, which are incorporated hereto. CFR Contractor and all subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Contractor shall not require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety.

- A. Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics (including watchmen and guards) shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph A, the contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions of paragraph B in the sum of \$25 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph A.
- C. Withholding for unpaid wages and liquidated damages:** Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph B of this section.
- D. Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor

shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

Further requirements are contained in the Davis-Bacon provisions (see 29 CFR 5.5(a)) stated further herein and are incorporated here by reference.

**9. NOTICE OF REPORTING REQUIREMENTS**

**9.1** Contractor acknowledges that it has read and understands the reporting requirements of FEMA, including the “SF-425 Federal Financial Report Filing Instructions” (available at <https://www.fema.gov/media-library/assets/documents/28389>). Contractor agrees to comply with all applicable reporting requirements, including those contained in any grant terms and conditions, notices of funding opportunity, or any program guidance associated with any FEMA funding related to this Agreement.

**9.2** The Contractor agrees to include the above clause in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**10. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

**10.1** Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

**10.1.1** The copyright in any work developed with the assistance of funds provided under this Agreement;

**10.1.2** Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

**10.2** The Contractor agrees to include the above paragraph in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**11. PATENT RIGHTS** (contracts meeting the definition of “funding agreements” (see 37 CFR Part 401) for experimental, research, or development projects financed by FEMA)

-Not applicable-

**12. ENERGY CONSERVATION REQUIREMENTS**

**12.1** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

**12.2** The Contractor agrees to include the above paragraph in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.



**13. CLEAN AIR AND WATER REQUIREMENTS** (all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year)

**13.1** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q), as amended, and the Federal Water Pollution Control Act as amended (33 USC 1251-1388) (as all or any may be amended), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

**13.2** Contractor agrees to report each violation of these requirements to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.

**13.3** The Contractor agrees to include the above paragraphs in each Third Party Subcontract exceeding \$150,000, such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**14. TERMINATION FOR CONVENIENCE OF OWNER** (all contracts in excess of \$10,000)

See Paragraph 14.6 of Section 00700 (General Conditions), as may be modified by Owner's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 6 (Termination) Paragraph 6.2 of the Agreement.

**15. TERMINATION FOR DEFAULT** (all contracts in excess of \$10,000)

Contractor's failure to perform or observe any term, covenant or condition of this Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement.

See Paragraph 14.5 of Section 00700 (General Conditions), as may be modified by Owner's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 6 (Termination) Paragraph 6.3 of the Agreement.

**16. CHANGES**

See Article 10 of Section 00700 (General Conditions), as may be modified by Owner's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 10 (Extra or Changed Work) of the Agreement.

**17. LOBBYING (Byrd Anti-Lobbying Amendment, 31 USC 1352 (as amended))** (all contracts and subcontracts in excess of \$100,000)

**17.1** Contractor shall not use or expend any funds received under this Agreement with any person or organization to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

**17.2** Contractor agrees to the provisions of Exhibit 2, Certification Regarding Lobbying, attached hereto and incorporated herein, and shall obtain such certifications for all subcontracts in excess of \$100,000. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**17.3** Contractor agrees to include the above paragraphs in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**18. MBE / WBE REQUIREMENTS**

Contractor shall make good faith effort and take all necessary affirmative steps (including those listed in 2 CFR 200.321) to assure that Minority and Women's Business Enterprises and labor surplus area firms are used when possible. Failure to engage in such affirmative steps shall be considered as a material breach of the contract.

Contractor, and all its subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible, including as sources of supplies, construction, equipment, or services. These affirmative steps must be documented and reported. Failure of Contractor or any subcontractor thereof to take the following steps shall be deemed a material breach of this Agreement:

- A.** Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- B.** Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C.** Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

If subcontracts are to be let, Contractor shall take the affirmative steps listed above and as otherwise required by 2 CFR 200.321.

## **19. PROCUREMENT OF RECOVERED MATERIALS**

**19.1** Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**19.2** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

**19.2.1** Competitively within a timeframe providing for compliance with the contract performance schedule;

**19.2.2** Meeting contract performance requirements; or

**19.2.3** At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

**19.3** The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

## **21. DHS SEAL, LOGO, AND FLAGS**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials, including those of FEMA or the United States Coast Guard, without specific FEMA pre-approval.

- 22. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACT** (all prime construction, repair, or alteration contracts in excess of \$2,000 funded under the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program [unless other grant or state/local law require independently])

a. Compliance with the Davis –Bacon Act:

Contractor shall comply with the Davis-Bacon Act (40 USC 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction), and shall comply with all of the following:

29 CFR 5.5(a):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ( 29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each

classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Owner may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to FEMA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the FEMA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to FEMA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to FEMA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of FEMA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed



as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio

permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7.. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

- b. Compliance with the Copeland "Anti-Kickback" Act (required for all Davis-Bacon contracts, and for contracts for construction or repair of public work financed in whole or part by federal loan or grant):

(1) Contractor. The contractor shall comply with 18 USC 874, 40 USC 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

**23. BONDS** (all construction or facility improvement contracts, or any subcontracts thereof, exceeding \$150,000)

Unless otherwise excepted in writing by Owner, for construction or facility improvement contracts exceeding \$150,000, or any subcontracts thereof in excess of \$150,000, Contractor shall obtain and maintain bonds as follows:

**23.1** A performance bond for 100 percent of the Agreement price, and

**23.2** A payment bond for 100 percent of the Agreement price.

**24. POLITICAL ACTIVITIES**

Contractor understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government without the express prior written approval of DHS.

## **Exhibit 1**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or Contractor receiving Federal funds, as well as any subcontractors that the agency or Contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, Owner may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

#### **Instruction for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions***

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Contractor Signature

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Date

## **Exhibit 2**

### **CERTIFICATION REGARDING LOBBYING**

#### *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person or organization for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. If any registrant under the Lobbying Disclosure Act of 1995 has made lobbying contacts on behalf of the undersigned with respect to this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
4. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. An imposition of a civil penalty under this subsection does not prevent the United States from seeking any other remedy that the United States may have for the same conduct that is the basis for the imposition of such civil penalty.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801 *et seq.*, apply to this certification and disclosure, if any.

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Contractor Signature

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Date

## **Exhibit F**

### **Insurance Requirements**

Consultant shall maintain and require all of its subcontractors and other agents to maintain the insurance listed below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Consultant shall not commence Work, nor allow its employees, subcontractors or anyone to commence Work until the required insurance has been submitted and approved by District. Any requirement for Consultant to maintain insurance after completion of the Work shall survive this Agreement.

District reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. District's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or District's failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### **1. INSURANCE**

##### **1.1. Workers Compensation and Employers Liability Insurance**

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers' Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against District.
- e. Required Evidence of Insurance:
  - i. Subrogation waiver endorsement and
  - ii. Certificate of Insurance
- f. If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers' Compensation and Employers' Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

##### **1.2. General Liability Insurance**

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project. The required

limits may be satisfied by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by Consultant.

- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by District. Consultant is responsible for any deductible or self-insured retention and shall fund it upon District's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving District.
- d. Insurance shall be continued for one (1) year after completion of the Work.
- e. Sonoma County Water Agency, Sonoma Valley County Sanitation District, their officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of the Consultant in the performance of this Agreement. The foregoing shall continue to be additional insureds for (1) year after completion of the Work under this Agreement.
- f. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- g. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- h. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against District.
- i. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- j. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
  - ii. Certificate of Insurance.

### 1.3. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District.



- c. If Consultant's services include: (1) programming, customization, or maintenance of software: or (2) access to individuals' private, personally identifiable information, the insurance shall cover:
  - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
  - ii. Claims against Consultant arising from the negligence of Consultant, Consultant's employees and Consultant's subcontractors.
- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

#### 1.4. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

#### 1.5. Contractors Pollution Liability Insurance

- a. Minimum Limits: \$1,000,000 per pollution Incident; \$1,000,000 Aggregate. If Consultant maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District. Consultant is responsible for any deductible or self-insured retention and shall fund it upon District's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving District.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of work.

- d. Coverage shall be continued for one (1) year after completion of the work. If the insurance is on a Claims-Made basis, the continuation coverage may be provided by: (a) renewal of the existing policy; (b) an extended reporting period endorsement; or (c) replacement insurance with a retroactive date no later than the commencement of the Work.
- e. Sonoma County Water Agency, Sonoma Valley County Sanitation District, their officers, agents, and employees, shall be additional insureds for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. The foregoing shall continue to be additional insureds for one (1) year after completion of the work.
- f. Required Evidence of Coverage:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
  - ii. Certificate of Insurance.

1.6. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.7. Documentation

- a. The Certificate of Insurance must include the following reference:  
TW 19/20-059.
- b. Consultant shall submit all required Evidence of Insurance prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with District as specified in Sections 1.1, 1.2, 1.3, 1.4, or 1.5, above for the required period of insurance.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Sonoma Valley County Sanitation District, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Consultant shall submit Required Evidence of Insurance for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, Consultant shall provide certified copies of required insurance policies within thirty (30) days.

1.8. Policy Obligations

- a. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.9. Material Breach

- a. If Consultant fails to maintain insurance which is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, District may purchase the required insurance, and without further notice to Consultant, District may deduct from sums due to Consultant any premium costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District.